

Presented by:
Stephanie Kirkpatrick, Supervisor of
Complaint and Investigation Unit
Department of Health
Division of Nursing Care Facilities

Objectives

- Understanding abuse definitions and regulations
- Understanding of reporting and investigating
- Knowledge of regulatory changes regarding abuse and reporting
- Awareness of trends and ways to prevent abuse/neglect
- Knowledge of Nurse Aide Registry and process of annotations

Definitions - Federal

Federal regulations (CFR 483.5- F 540)

- Abuse is willfull infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish. Abuse also include the deprivation by an individual, including a caretaker, of goods or services that are necessary to attain or maintain physical, mental, psychosocial well-being. Instances of abuse of all residents, irrespective of any mental or physical condition, cause physical harm, pain or mental anguish. It includes verbal abuse, sexual abuse physical abuse including abuse facilitated or enable through the use of technology. Willful, as used in this definition of abuse, means the individual must have acted deliberately, not that the individual must have intended to inflict injury or harm.

Definitions – F540 continued

- Exploitation – taking advantage of a resident for personal gain through the use of manipulation, intimidation, threats or coercion.
- Misappropriation of resident property means the deliberate misplacement, exploitation, or wrongful, temporary, or permanent use of a resident's belongings or money without the resident's consent.
- Mistreatment means inappropriate treatment or exploitation of a resident.
- Neglect is the failure of the facility, its employees or service providers to provide goods and services to a resident that are necessary to avoid physical harm, pain, mental anguish, or emotional distress.
- Sexual Abuse is non-consensual sexual contact of any type with a resident.

Definitions – State

- **28 PA Code 201** – LTC Licensure regulations
 - Abuse - Same as Federal definition except does not include the word “willful”

Definitions – State OAPSA

- **Older Adult Protective Services Act (OAPSA) – Act 13**

- The occurrence of one or more of the following acts: (1) the infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish; (2) the willful deprivation by a caretaker of goods or services which are necessary to maintain physical or mental health; (3) sexual harassment; and/or (4) sexual abuse which is intentionally, knowingly or recklessly causing or attempting to cause rape, involuntary deviate sexual intercourse, sexual assault, statutory sexual assault, aggravated indecent assault or incest.

- **Serious Bodily Injury:** An injury which creates a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of the function of a body member or organ.
 - **Serious Physical Injury:** An injury that causes a person severe pain or significantly impairs a person's physical functioning, either permanently or temporarily.
 - **Sexual Harassment:** Sexual harassment is unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature.
 - **Sexual Abuse:** Intentionally, knowingly or recklessly causing or attempting to cause rape, involuntary deviate sexual intercourse, sexual assault, statutory sexual assault, aggravated indecent assault, indecent assault or incest.

Federal Regulation Updates

- **F600 - §483.12 Freedom from Abuse, Neglect, and Exploitation**
 - The resident has the right to be free from abuse, neglect, misappropriation of resident property, and exploitation as defined in this subpart. This includes but is not limited to freedom from corporal punishment, involuntary seclusion and any physical or chemical restraint not required to treat the resident's medical symptoms.
 - §483.12(a) The facility must—
 - §483.12(a)(1) Not use verbal, mental, sexual, or physical abuse, corporal punishment, or involuntary seclusion;
 - Interpretation includes that the facility cannot disown the acts of staff, since the facility relies on them to meet requirements
 - Striking a combative resident is not an appropriate response in any situation, nor is a reflexive or a knee jerk reaction that was not intended to cause harm.

Federal Regulation Updates

- **F602- §483.12**
 - The resident has the right to be free from abuse, neglect, misappropriation of resident property, and exploitation as defined in this subpart. This includes but is not limited to freedom from corporal punishment, involuntary seclusion and any physical or chemical restraint not required to treat the resident's medical symptoms.
 - DEFINITIONS §483.12
 - “Exploitation,” as defined at §483.5, means “taking advantage of a resident for personal gain, through the use of manipulation, intimidation, threats, or coercion.”
 - “Misappropriation of resident property,” as defined at §483.5, means “the deliberate misplacement, exploitation, or wrongful, temporary, or permanent use of a resident's belongings or money without the resident's consent.”

Federal Regulation Updates

- **F607 –**
 - §483.12(b) The facility must develop and implement written policies and procedures that:
 - §483.12(b)(1) Prohibit and prevent abuse, neglect, and exploitation of residents and misappropriation of resident property,
 - §483.12(b)(2) Establish policies and procedures to investigate any such allegations, and
 - §483.12(b)(3) Include training as required at paragraph §483.95,
 - §483.12(b)(4) Establish coordination with the QAPI program required under §483.75. [§483.12(b)(4) will be implemented beginning November 28, 2019 (Phase 3)]

Federal Regulation Updates

- **F608 - New**

- §483.12(b) The facility must develop and implement written policies and procedures that:
- §483.12(b)(5) Ensure reporting of crimes occurring in federally-funded long-term care facilities in accordance with section 1150B of the Act. The policies and procedures must include but are not limited to the following elements.
 - (i) Annually notifying covered individuals, as defined at section 1150B(a)(3) of the Act, of that individual's obligation to comply with the following reporting requirements.
 - (A) Each covered individual shall report to the State Agency and one or more law enforcement entities for the political subdivision in which the facility is located any reasonable suspicion of a crime against any individual who is a resident of, or is receiving care from, the facility.
 - (B) Each covered individual shall report immediately, but not later than 2 hours after forming the suspicion, if the events that cause the suspicion result in serious bodily injury, or not later than 24 hours if the events that cause the suspicion do not result in serious bodily injury.

Federal Regulation Updates

- **F 609**

- §483.12(c) In response to allegations of abuse, neglect, exploitation, or mistreatment, the facility must:
- §483.12(c)(1) Ensure that all alleged violations involving abuse, neglect, exploitation or mistreatment, including injuries of unknown source and misappropriation of resident property, are reported immediately, but not later than 2 hours after the allegation is made, if the events that cause the allegation involve abuse or result in serious bodily injury, or not later than 24 hours if the events that cause the allegation do not involve abuse and do not result in serious bodily injury, to the administrator of the facility and to other officials (including to the State Survey Agency and adult protective services where state law provides for jurisdiction in long-term care facilities) in accordance with State law through established procedures.
- §483.12(c)(4) Report the results of all investigations to the administrator or his or her designated representative and to other officials in accordance with State law, including to the State Survey Agency, within 5 working days of the incident, and if the alleged violation is verified appropriate corrective action must be taken.

Federal Regulation Updates

- **F610 - Investigation**

- §483.12(c) In response to allegations of abuse, neglect, exploitation, or mistreatment, the facility must:
- §483.12(c)(2) Have evidence that all alleged violations are thoroughly investigated.
- §483.12(c)(3) Prevent further potential abuse, neglect, exploitation, or mistreatment while the investigation is in progress.
- §483.12(c)(4) Report the results of all investigations to the administrator or his or her designated representative and to other officials in accordance with State law, including to the State Survey Agency, within 5 working days of the incident, and if the alleged violation is verified appropriate corrective action must be taken.

Regulations requiring abuse reporting:

- Title 28-Chapter 51
 - Notification to Department of Health
- Older Adult Protective Services Act (OAPSA)
 - Act 13 of 1997-
 - Requires an employee or administrator of a facility who has reasonable cause to suspect that a recipient is a victim of abuse
 - Local Area Agency on Aging (AAA) notification requirement
 - PA Department of Aging (PDA) notification requirement

➤ Additional requirements under OAPSA

- Act 28 of 1995
 - PDA and AAA, DOH or DPW must report to local law enforcement or to the Office of Attorney General when a care-dependent person residing in facility has suffered bodily injury or has been unlawfully restrained
- Act 169 of 1996

Investigation

- **Facility Responsibilities**
 - Ensure Resident Safety
 - Re-assignment
 - Increase supervision
 - Immediate suspension
 - Termination
 - Initiate and Thoroughly Investigate
 - Identify any harm
 - Notify Appropriate Parties
 - Prevent Recurrence
 - Document and Submit Report

➤ Investigation – Evidence

- Gather evidence
 - Identify location and specifics of injury
 - Acquire statements
 - » Witness
 - » Resident
 - » Alleged Perpetrator
 - » Family
 - Documentation – Resident
 - » MDS Assessments
 - » Care Plans/Care Cards
 - » Nurses, physician, therapy etc. progress notes
 - » Hospital, ER, X-ray reports

➤ Investigation – Evidence

- Documentation- Personnel
 - » Employment History
 - » Performance Evaluations
 - » Disciplinary Actions
 - » Trainings
 - » Policies
 - » Schedules/assignments

- Miscellaneous
 - » Property Sheet
 - » Sales Receipts/bills
 - » Police reports

Reporting

- ERS (Title 28 Chapter 51)
 - Time Requirement - 2 hours or 24 hours
- PB22
 - 5 working days
- Area Agency on Aging – Act 13
 - Immediate report
- Pennsylvania Department of Aging and Law Enforcement – Act 13
 - 5 serious – Sexual Abuse, Serious Physical Injury, Serious Bodily Injury or Suspicious Death
 - Immediate report
- Law Enforcement or Attorney General- Act 28-Neglect of Care Dependent Person

➤ Reporting – PB 22

- **Helpful Hints:**

(1) The ERS event must be submitted before an electronic PB-22 is available.

(2) Hit Save Button at the bottom of the form often, at least every 5 minutes, to avoid losing information that has been entered.

(3) If there is an option to add an attachment, text may not be entered into the box IF an attachment is added. It is either text in the field or added attachment.

(4) If there are numerous documents to be added as an attachment to one field, the documents should be scanned into one document, saved on your computer, and then added as an attachment.

(5) If an event is accepted with no perpetrator and then later a perpetrator is identified, the event must be resubmitted as a new event so that the PB-22 can be attached.

➤ Reporting – PB22

- Complete all applicable sections
 - Registry number
 - Resident credibility
 - Witness credibility and willingness to testify
 - Findings, conclusions and actions taken
 - Attachments- statements, care plans, progress notes
 - AAA contact
 - PDA contact

➤ Prevention

- Complete Screening
- Training
- Policies
- Timely investigation
- Adequate oversight and monitoring
- Stress reduction for staff
- Comprehensive Care Planning
- Physical environment features

➤ Prevention – Behavioral Symptoms

- Aggressive and/or catastrophic reactions of residents;
- Wandering or elopement-type behaviors;
- Resistance to care;
- Outbursts or yelling out; and
- Difficulty in adjusting to new routines or staff.

Protection

- Immediate response to protect resident
- Assessing/examine resident for injury – physical or mental
- Increase supervision
- Room or staffing changes, if necessary
- Protection from retaliation
- Provide emotional support and counseling to resident during and after the investigation
- Analyze occurrence to determine reasons occurred and what changes could be made

➤ Trends and Statistics

- Most frequent allegation types
 - Neglect
 - Misappropriation
 - Physical Abuse
 - Mental/verbal

➤ Trends and Statistics - Neglect

- Neglect Definition:
 - Federal - “the failure of the facility, its employees or service providers to provide goods and services to a resident that are necessary to avoid physical harm, pain, mental anguish, or emotional distress.”
 - State – Act 13 of 1997 (OAPSA) “the willful deprivation by a caretaker of goods or services which are necessary to maintain physical or mental health”
 - Neglect can be considered with intent or injury

➤ Trends and Statistics - Neglect

- Transfers
 - Failure to follow care plan
- Care provided incorrectly
 - Rolling resident wrong way to provide care

➤ Trends and Statistics - Misappropriation

- Definition: The deliberate misplacement, exploitation, or wrongful (temporary or permanent) use of a resident's belongings or funds without the resident's consent.
 - Missing/Lost Medicine – if it belongs to the resident.
 - Missing Resident Money/Personal Items
 - Power of Attorney (POA) Misappropriating Resident Funds
 - Staff member used Resident Funds

➤ Trends and Statistics - Misappropriation

- Credit cards, checks, ATM cards, cash
- Medication – pain patches off of residents
- Resident's personal belongings – jewelry, pictures
- Exploitation - means taking advantage of a resident for personal gain through the use of manipulation, intimidation, threats, or coercion.

➤ Trends and Statistics – Physical

- Falls under the general definition of abuse
 - **42 CFR 483.13(b)**, “Abuse” means the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish (42 CFR 488.301);
 - **28 PA Code 201.3** Definitions, The infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm or pain or mental anguish, or deprivation by an individual, including a caretaker, of goods or services that are necessary to attain or maintain physical, mental and psychosocial well-being. This presumes that instances of abuse of all residents, even those in a coma, cause physical harm, or pain or mental anguish.
- *Physical abuse*—Includes hitting, slapping, pinching and kicking. The term also includes controlling behavior through corporal punishment.

➤ Trends and Statistics – Physical

- Reaction to combative behavior or difficult residents
- Attempting to force residents to eat
- Attempting to force residents to abide by care plan (i.e. not ambulate alone)

➤ Trends and Statistics – Mental/Verbal

- Part of general abuse definition
 - *Mental abuse*—Includes humiliation, harassment, threats of punishment or deprivation.
 - *Verbal abuse*—Any use of oral, written or gestured language that willfully includes disparaging and derogatory terms to residents or their families, or within their hearing distance, regardless of their age, ability to comprehend or disability. Examples of verbal abuse include:
 - (A) Threats of harm.
 - (B) Saying things to frighten a resident, such as telling a resident that the resident will never be able to see his family again.

➤ Trends and Statistics – Mental/Verbal

- Most difficult to substantiate
- NEW CAUTION – use of technology-cell phones, social media, email
- CMS S & C Memo issued on August 5, 2016

➤ Nurse Aide Registry

- 313,548 total Nurse Aide records on registry
 - Active records 94,513
 - Approximately total of 1182 annotated
 - 2,720 Nurse Aide PB22s submitted in one year time frame

➤ Nurse Aide Registry

- Department of Education-training
- Department of Aging/OLTL-testing/reimbursement
- Department of Health-oversight once on registry
- Pearson Vue

➤ Nurse Aide Registry

- On-line registration renewal process
- Update address
- Initiate name change
- Facilities able to update employment history of employees
- On-line test scheduling

➤ Nurse Aide Registry - Annotation

- Facility identifies allegation of abuse
 - Investigates and determines allegation is substantiated
 - Reports to DOH via ERS – event report and PB22
 - Received by Field Office and reviewed to determine if meets definition and level of action to be taken
 - Field Office recommends Proceed for annotation
 - Central Office reviews and prepares for review by the Nurse Aide Registry Committee
 - Decision is made
 - » Substantiated- Proceed
 - Order to show cause
 - Hearing if requested
 - 30 day appeal to hearing decision
 - Annotation if upheld

➤ Nurse Aide Registry - Annotation

- If annotated on the registry, an individual may not work in a nursing care facility in any capacity
- Annotation is permanent, except for annotation as a result of substantiated Neglect
 - Individual with Neglect annotation may request to be reinstated after one year
 - Request to be reinstated must include statement indicating why the removal of the determination is warranted, relevant information about your job performance history, three personal references and indication of educational or enrichment activities. The decisions on these petitions shall be based on the personal and employment history and whether the neglect constituted a single occurrence.

Questions

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Ra-ncf@pa.gov

717-787-1816